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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/783,354	02/14/2001	Sydney D. Daniel	IRC293-14060/205649	1055

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JOHN S. PRATT, ESQ  
KILPATRICK STOCKTON, LLP  
1100 PEACHTREE STREET  
SUITE 2800  
ATLANTA, GA 30309

EXAMINER

RHEE, JANE J

ART UNIT	PAPER NUMBER
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1772

20

DATE MAILED: 05/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

**Application No.**

09/783,354

**Applicant(s)**

DANIEL ET AL.

**Examiner**

Jane J Rhee

**Art Unit**

1772

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 April 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-19,21-24,27,30,40-45 and 47.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: see attachment.

### **ADVISORY ACTION**

1. The 35 U.S.C. 102 rejection of claims 1-3,5-10,21,27,28,32,34-40,45-46,48 as anticipated by Eusemann is repeated for the reasons previously of record in Paper #14, Page 2, Paragraph #2.
2. The 35 U.S.C. 103 rejection of claims 11-20,22-24,29-30,33-44,47 over Eusemann in view of Hamilton et al. is repeated for the reasons previously of record in Paper #14, Page 5, Paragraph#3.

### ***Response to Arguments***

3. Applicant's arguments filed 3/31/03 have been fully considered but they are not persuasive.

In response to applicant's argument that Eusemann tiles teaches pattern alignment and not orthogonal ambiguity without pattern alignment, regardless if applicant argues that irregular laying of the tiles is with pattern alignment between adjacent tiles, it is a design choice on how a consumer desires to install his floorcovering. If the tiles are irregularly placed together in a scattered formation, pattern alignment does not have to occur, it may occur, but does not have to occur. If all of applicant's tiles have patterns there must be some patterned alignment within the floorcovering, such as in applicant's drawings, figure 1, the top left corner tile connected to the tiles on the right, right adjacent bottom and direct bottom tile have a patterned alignment wherein the yellow pattern is aligned together. Pattern alignment is distinguished in view of the viewer wherein any design is a pattern and any two patterns put together side by

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side would have some sort of pattern alignment even if the pattern alignment is displeasing to the eye. However, when irregularly placing tiles in a scattered formation, the consumer can avoid pattern alignment because the consumer can purposely strategically place the tiles so no pattern aligns together.

In response to the request for an interview has been denied since an interview has already been conducted and the application is currently being prosecuted after a final rejection.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane J Rhee whose telephone number is 703-605-4959. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Jane Rhee  
May 5, 2003

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772  
5/5/03